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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ADRIAN RISKIN,

Petitioner,

vs.

HOLLYWOOD PROPERTY OWNERS ALLIANCE, a
non-profit corporation, and **ANDREWS**
INTERNATIONAL, INC., a Delaware corporation,

Respondents.

Case No.

**Verified Petition for Declaratory Relief and
Writ of Mandate Ordering Compliance with the
California Public Records Act**

[Cal. Government Code §§ 6250 *et seq.*]

Petitioner Adrian Riskin petitions the Court for a writ of mandate requiring Respondent Hollywood Property Owners Alliance and Andrews International, Inc., to immediately make available to Petitioner public records lawfully requested by Petitioner pursuant to the California Public Records Act, Gov't Code § 6250, *et seq.* ("CPRA"). Petitioner also respectfully requests that this Court grant relief in the form of declaratory relief, costs of suit, attorneys' fees, and other appropriate and just relief resulting from Respondents' unlawful conduct. Petitioner alleges as follows:

Parties

1. Petitioner Adrian Riskin is a resident of Los Angeles and an open records activist. He uses CPRA to investigate and understand the activities of business improvement districts ("BIDs"), Los Angeles City government, and the relationships between them. He publishes the records he obtains and blogs about them at michaelkohlhaas.org. His collection of records has helped researchers and the public at large understand BIDs, including students at U.C. Berkeley School of Law's Police Advocacy Clinic

and documentary filmmakers producing a film about the Greater West Hollywood Food Coalition and the Hollywood Media District BID. Through his research he discovered that a section of the Los Angeles Municipal Code that requires private patrol operators to register with the Los Angeles Police Commission and submit to Commission oversight that the Commission had inadvertently not enforced since 1999. Riskin's work led to the City Attorney resuming enforcement of this law and to the investigation by the LAPD of the BID Patrol for a use of excessive force during a private person's arrest. He has also written a practical guide to the use of CPRA in the City of Los Angeles which has helped and encouraged others to use the law for their own education and activism.

2. Respondent Hollywood Property Owners Alliance (“HPOA”) is a property owners’ association pursuant to the Property and Business Improvement District Law of 1994, California Streets & Highways Code §§ 36600 *et seq.* Respondent contracts with the City of Los Angeles and other entities to manage BIDs in the Hollywood area, including the Hollywood Entertainment District BID and the Sunset & Vine BID. Respondent HPOA is subject to CPRA both as a matter of state law, California Streets & Highways Code § 36612, and also under the terms of its contract with the City of Los Angeles.

3. Andrews International, Inc. (A/I), is a Delaware corporation that provides uniformed security services to business clients. A/I contracts with Respondent HPOA to provide security in the Hollywood area.

Jurisdiction and Venue

4. This Court has jurisdiction under Government Code §§ 6258 & 6259 and Code of Civil Procedure §§ 1060 & 1085.

5. Venue is proper in this Court. The records in question, or some portion of them, are situated in the County of Los Angeles. *See* Gov't Code § 6259(a); Code Civ. Pro. § 401(1). Also, Respondents reside in, and the acts and omissions complained of herein occurred in, the County of Los Angeles. *See* Code Civ. Pro. §§ 393(b) & 394(a).

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General Allegations

HPOA'S DOCUMENT RETENTION POLICY

6. In March 2016, Respondent HPOA instituted a document retention policy pursuant to which it, on information and belief, justifies withholding emails in its possession in response to CPRA requests. Respondent HPOA, on information and belief, uses the document retention policy to unilaterally declare what emails it will (and will not) make available for production under the CPRA.

7. A true and correct copy of this document retention policy is attached hereto as Exhibit A.

8. Respondent HPOA's document retention policy states that:

E-mail messages are generally considered "transitory" documents (works-in-progress), and therefore are not records of the Association and are not subject to the Association's minimum records retention requirements. This is because Association emails are automatically deleted after 90 days, unless specifically retained. However, particularly important e-mail messages may be official records. An official record is generally defined as any writing or record of an event or information that was made or retained for the purpose of preserving its information content for future reference.

E-mails that are official records are subject to the Association's records retention schedule and may be subject to disclosure in response to a request for public records. They should be retained by one of the following means: (1) printed out and maintained in the respective department filing system as a paper document; or (2) retained electronically in an organized electronic archival system established and maintained by the organization. E-mails that are not official records should be retained no more than 90 days. The Association automatically deletes e-mails not retained in an archival system.

9. On information and belief, HPOA's document retention policy prior to March 2016 did not contain any provision purporting to establish certain emails as "not records of the Association" and "not subject to the Association's minimum records retention requirements."

10. On March 17, 2016, Petitioner made a request to Respondent HPOA pursuant to the CPRA for "all emails to or from anyone at the domain hollywoodbid.org and the domains or any subdomains thereof of lacity.org, andrewsinternational.com, or hollywoodbid.org from January 1, 2016 through March 17, 2016."

11. A true and correct copy of this request ("the First HPOA Email Request") is attached hereto as Exhibit B.

1 12. On April 22, 2016 and April 28, 2016, Respondent HPOA provided 163 pages of records
2 responsive to the First HPOA Request. Each of the emails produced were marked with the phrase
3 “Archive for Records.” Even the emails dated prior to March 17, 2016—the date of the new document
4 retention policy—were produced marked with phrase “Archive for Records,” suggesting that
5 Respondent HPOA even applied the new policy retroactively.

6 13. On April 23, 2016, Petitioner sent a CPRA request to Dan Halden, the Hollywood field deputy
7 for Los Angeles City Council District 13 (“CD13”), seeking “emails between anyone at CD13 and
8 anyone at the domains hollywoodbid.org or andrewsinternational.com from between January 1, 2016
9 and April 23, 2016.”

10 14. A true and correct copy of this request (“the Halden Request”) is attached hereto as Exhibit C.

11 15. On May 20, 2016, Mr. Halden provided documents responsive to the Halden Request. Among
12 them were dozens of emails from Kerry Morrison or other HPOA staff that were responsive to the First
13 HPOA Email Request but not produced by Respondent HPOA in response to that Request.

14 16. These emails were not more than 90 days old at the time Respondent processed the First HPOA
15 Email Request, and thus would not have been automatically deleted pursuant to the March 2016
16 document retention policy.

17 17. Among the emails produced in response to the Halden Request is a February 10, 2016, email
18 from Respondent HPOA’s Executive Director Kerry Morrison to Colleen Gilmore at foga.com and an
19 April 1, 2016, email in which Morrison forwarded that February 10, 2016 email to John Szabo at
20 lapl.org.

21 18. A true and correct copy of this email is attached hereto as Exhibit D.

22 19. The fact that HPOA Executive Director Morrison was able to forward the February 10, 2016,
23 email on April 1, 2016, indicates that Respondent HPOA possessed this email on its server (i.e., it was
24 not deleted) at the time it processed the First HPOA Email Request, yet did not produce it as a
25 responsive record.

1 20. Once Petitioner received these emails responsive to the Halden Request, he reached out to Ms.
2 Morrison to ask why they were not provided in response to the First HPOA Email Request. She did not
3 respond.

4 21. On April 21, 2016, Petitioner made a CPRA request to Respondent HPOA for emails from
5 between April 1 and April 21, 2016, between Respondent HPOA's staff and "anyone at the domains (or
6 subdomains thereof) hollywoodbid.org, lacity.org, andrewsinternational.com, ccala.org,
7 hollywoodchamber.net.to and from lacity.org."

8 22. A true and correct copy of this request ("the Second HPOA Email Request") is attached hereto as
9 Exhibit E.

10 23. On June 23, 2016, Respondent produced a number of emails responsive to this request, including
11 the February 10, 2016 email that Respondent HPOA failed to produce in response to the First HPOA
12 Email Request (and despite the fact that the Second HPOA Email Request did not seek documents
13 before April 1, 2016). The February 10, 2016 email was produced now marked with the phrase "Archive
14 for Records," as were all the other emails Respondent produced in response to this Request.

15 24. A true and correct copy of the February 10, 2016 email produced by Respondent HPOA in
16 response to the Section HPOA Email Request is attached hereto as Exhibit F.

17 25. The fact that Respondent HPOA produced the February 10, 2016 email in response to the Second
18 HPOA Email Request indicates that Respondent HPOA possessed the email at the time it responded to
19 the First HPOA Email Request but did not produce it in response to that request, despite the fact that the
20 email was clearly responsive to the First HPOA Email Request.

21 26. On information and belief, Respondent HPOA refuses to produce emails in its possession in
22 response to CPRA requests that it itself has not marked as "Archive for Records."

23 27. As articulated in Respondent HPOA's March 2016 document retention policy, Respondent
24 HPOA takes the position that only those "E-mails that are official records"—i.e., those emails
25 unilaterally marked Archive for Records by Respondent—"are subject to the Association's records
26 retention schedule and . . . subject to disclosure in response to a request for public records."
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1 28. By withholding responsive records in its possession in response to CPRA requests based on its
2 own unilateral determination of whether or not the document should be marked "Archive for Records,"
3 Respondent HPOA has violated and is continuing to violate the CPRA.
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6 DOCUMENTS IN NATIVE ELECTRONIC FORMATS

7 29. On November 23, 2015, Petitioner made a request pursuant to the CPRA to Respondent HPOA
8 seeking "emails between the HPOA or Central Hollywood Commission and the Hollywood Chamber"
9 for certain time periods, as well as "all emails sent or received by anyone on the HPOA staff and anyone
10 at A/I [Andrews International]" for certain time periods.

11 30. A true and correct copy of this request ("the Hollywood Chamber Request") is attached hereto as
12 Exhibit G.

13 31. On January 4, 2016, Respondent HPOA produced responsive emails and their attachments in a
14 format that involved printing the emails and then scanning the paper copies to PDF format. The next
15 day, Petitioner inquired as to why Respondent HPOA had not supplied the emails in their native format
16 as mandated by Government Code § 6253.9(a)(1).

17 32. Having received no response to his email, on January 6, 2016, Petitioner requested two
18 documents, both of which were attachments to emails in January 4, 2016 production, in their native
19 format. One was in a Microsoft Excel (.xlsx) format, the other in Microsoft Word (.doc) format.

20 33. A true and correct copy of this request ("the Native Format Email Attachment Request") is
21 attached hereto as Exhibit H.

22 34. Respondent HPOA did not produce the attachments in their native electronic format in response
23 to the Native Format Email Attachment Request.

24 35. The lack of native format information hindered Petitioner's subsequent CPRA requests to
25 government agencies. Petitioner was made to recreate the information contained in the spreadsheet by
26 manually inputting the information into new documents, risking errors and incorrect results when
27 analyzing the information.
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1 36. On June 1, 2016, Petitioner followed up with Respondent HPOA on the then-nearly-six-month-
2 old request. In response, Respondent HPOA claimed that the printed-to-paper-and-scanned PDF was the
3 equivalent to the Excel spreadsheet itself.

4 37. By refusing to provide electronic documents in their native format, Respondent HPOA has
5 violated and is violating the CPRA.

6 DOCUMENTS RELATED ANDREWS INTERNATIONAL SECURITY BID PATROL

7 38. Respondent A/I is a private security operator which contracts with Respondent HPOA to provide
8 security in the Hollywood area. The specific unit of A/I which provides security for the HPOA is known
9 as the “BID Patrol.”

10 39. The BID Patrol patrols the public streets of Hollywood. They make hundreds of citizen’s arrests
11 each year of homeless people for so-called quality-of-life offenses, such as L.A. Municipal Code
12 § 41.18(d) (sitting, sleeping, or laying on a public sidewalk), public urination, and drinking in public.
13 They cooperate with and provide backup to the LAPD on operations. They cooperate with various
14 homeless outreach organizations in Hollywood in providing social services to the homeless. Members of
15 the BID Patrols also conduct research on homeless Hollywood residents and the homeless population
16 generally for HPOA Executive Director Kerry Morrison, including administering surveys and
17 interviews. The BID Patrols also gather information to use in competency and conservatorship hearings
18 for homeless residents of Hollywood.

19 40. Much, if not most, of the Respondent A/I’s BID Patrols consist of private security officers
20 interacting with Hollywood’s homeless population.

21 41. Respondent A/I produces a variety of documents related to its security services, including daily
22 logs, arrest reports, photographs, videos, and bodycam recordings.

23 42. Contracts between Respondent A/I and Respondent HPOA in force from January 1, 2007 through
24 June 15, 2016 stated that Respondent owned all of Respondent A/I’s work product related to the BID
25 Patrols. As a result, the HPOA regularly produced documents created by A/I’s BID Patrol in response to
27 CPRA requests directed to the HPOA.
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1 43. These documents, obtained by Petitioner under the CPRA, revealed numerous instances of
2 unjustified and unlawful activity by Respondent A/I on behalf of Respondent HPOA.

3 44. For instance, Respondent HPOA, without authorization, placed signs at Hollywood's Selma
4 Park, which is operated by the Los Angeles Recreation and Parks Department, declaring that it was a
5 violation of law for adults to be present in the park if they were not accompanying a child or children.
6 Petitioner's CPRA requests revealed that at least 46 people were arrested between 2007 and 2015 for
7 violating this nonexistent restriction, including many by Respondent A/I's BID Patrol, on behalf of
8 Respondent HPOA. In 2013 alone, CPRA documents revealed that BID Patrol officers ordered at least
9 159 people to leave Selma Park under threat of arrest for violating this nonexistent restriction. In
10 addition to those arrested and ordered to leave the park, it is impossible to know how many people who,
11 upon seeing the signs, decided not to enter the park even though they had the right to do so.

12 45. Shortly after Petitioner brought this issue to the attention of the Los Angeles Recreation and
13 Parks Department in September of 2015, the signs were taken down. BID harassment of individuals
14 using the park appears to have abated since the removal of the signs.

15 46. On June 16, 2016—the first time after the Selma Park discovery that Respondent HPOA's
16 contract with Respondent A/I was set to renew—Respondent HPOA entered into a revised contract with
17 Respondent A/I relinquishing control and access to Respondent A/I's work product, including daily logs,
18 arrest reports, photographs, videos, and bodycam recordings.

19 47. On August 29, 2016, Petitioner made a request pursuant to the CPRA to Respondent HPOA for,
20 among other documents, "daily logs, arrest reports, photographs, videos, bodycam recordings, and audio
21 recordings produced by A/I BID Patrol security guards from January 1, 2016" to the date the request was
22 processed.

23 48. A true and correct copy of this request ("the A/I BID Patrol Request") is attached hereto as
24 Exhibit I.

25 49. On September 15 and 19, 2016, Respondent HPOA produced documents responsive the A/I BID
27 Patrol Request but did not produce any daily logs from Respondent A/I during this period that related to
28 activities of the BID; arrest reports from Respondent A/I during this period that related to activities of

1 the BID; video recordings of any type from Respondent A/I during this period that related to activities of
2 the BID; or audio recordings of any type from Respondent A/I during this period that related to activities
3 of the BID.

4 50. Respondent HPOA did not provide this material for any of the period requested (from January 1,
5 2016), suggesting that Respondent HPOA views the amended contract with Respondent A/I (entered into
6 on June 16, 2016) to retroactively exempt all Respondent A/I's work product.

7 51. On information and belief, Respondent HPOA entered into the new contract with Respondent A/I
8 exempting its work product in whole or in part to prevent disclosure of such information in response to
9 CPRA requests, particularly to Petitioner.

10 52. By relinquishing control over documents related to Respondent A/I's security services, including
11 daily logs, arrest reports, photographs, videos, and bodycam recordings, Respondent HPOA has violated
12 and is violating the CPRA, including Government Code § 6253.3, which provides that an "agency may
13 not allow another party to control the disclosure of information that is otherwise subject to disclosure."

14 53. As a private entity that has assumed control of public records pursuant to contract with an entity
15 covered by the CPRA, A/I is an indispensable and/or necessary party to this proceeding.

16 DOCUMENTS RELATED CONTACT INFORMATION FOR PROPERTY OWNERS IN BIDS

17 54. Respondent HPOA receives funding and, in turns, funds its BIDs through a special assessment
18 charged to assessed property owners within the HPOA's BID districts. *See generally* California Streets &
19 Highways Code §§ 36631 *et seq.*

20 55. The assessed property owners within a district have, during a 30-day period each year, the power
21 to petition for the disestablishment of a BID. California Streets & Highways Code § 36670(b).

22 56. Respondents HPOA's two BIDs are also up for renewal by the assessed property owners in 2018.

23 57. On April 23, 2016, Petitioner made a request pursuant to the CPRA to Respondent HPOA
24 seeking a list of property owners in the BID along with contact information.

25 58. A true and correct copy of this request ("the Contact Information Request") is attached hereto as
26 Exhibit J.

59. Petitioner sought this information to be able to present information related to the BIDs to the assessed property owners, with the goal of lobbying for disestablishment or nonrenewal of the BIDs.

60. On May 20, 2016, Respondent HPOA provided a response consisting of a list of property parcels in the BID and instructing Petitioner to obtain the owner information himself from L.A. County.

61. A true and correct copy of this response is attached hereto as Exhibit K.

62. After Petitioner objected to this response, Respondent HPOA then asserted that contact information was exempt, citing “Government Code Sections 6254(c) and (k) (including Article 1, Section 1 of the CA Constitution), 6254.3, 6254.21, and 6255(a), without limitation.”

63. A true and correct copy of Respondent HPOA's assertion of these exemptions is attached hereto as Exhibit L.

64. Petitioner responded that none of these exemptions applied, that the personal privacy protections were inapplicable to business addresses, and that Respondent HPOA's initial response recognized that this information was publicly available (albeit burdensome to gather) through the public assessor's office. Petitioner asked Respondent HPOA to reconsider its position on these exemptions.

65. A true and correct copy of this response is attached hereto as Exhibit M.

66. On information and belief, Respondent HPOA possesses document responsive to the Contact Information Request that contain a list of property owners within the BIDs and their contact information.

67. Respondent HPOA did not reconsider its position and, to date, has failed to produce documents responsive to the Contact Information Request (apart from the list of property parcels in the BID).

68. The information subject to the Contact Information Request is not protected by any CPRA exemption.

The California Public Records Act

69. Under the CPRA, all records that are prepared, owned, used, or retained by any public agency, and that are not subject to the CPRA's statutory exemptions to disclosure, must be made publicly available for inspection and copying upon request. Government Code § 6253.

70. In enacting the CPRA the legislature recognized that:

1 a requester, having no access to agency files, may be unable to precisely identify the documents
2 sought. Thus, writings may be described by their content. The agency must then determine
3 whether it has such writings under its control and the applicability of any exemption. An agency
is thus obliged to search for records based on criteria set forth in the search request.

4 *California First Amendment Coalition v. Superior Court* (1998) 67 Cal. App. 4th 159, 165-66; see Gov-
5 ernment Code § 6253(b).

6 71. Whenever it is made to appear by verified petition to the superior court of the county where the
7 records or some part thereof are situated that certain public records are being improperly withheld from
8 a member of the public, the court shall order the officer or person charged with withholding the records
9 to disclose the public record or show cause why he or she should not do so. The court shall decide the
10 case after examining the record in camera (if permitted by the Evidence Code), papers filed by the
11 parties, and any oral argument and additional evidence as the court may allow. *Id.* § 6259(a).

12 72. If the Court finds that the failure to disclose is not justified, it shall order the public official to
13 make the record public. *Id.* § 6259(b).

14 73. To ensure that access to the public's information is not delayed or obstructed, the CPRA requires
15 that "[t]he times for responsive pleadings and for hearings in these proceedings shall be set by the judge
16 of the court with the object of securing a decision as to these matters at the earliest possible time." *Id.*
17 § 6258.

18 **First Cause of Action**

19 *For Violations of the California Public Records Act*

20 74. Petitioner hereby realleges and incorporates by reference the preceding paragraphs in this
21 Petition.

22 75. Pursuant to Government Code § 6258, any persons, such as Petitioner, may "institute proceeding
23 for injunctive or declaratory relief or writ of mandate in any court of competent jurisdiction to enforce
24 his or her right to inspect or receive a copy of any public record or class of public records under this
25 chapter."

26 76. The records sought by Petitioner seek are public records, i.e., writings related to the conduct of
27 the public's business.
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1 77. Upon information and belief, Respondents prepared, retained, used, or have control or
2 constructive possession of public records that are responsive to Petitioner's requests, or have allowed
3 another party to control the disclosure of information that is otherwise subject to disclosure.

4 78. Petitioner alleges in accordance with Government Code § 6259(a) that the information it seeks
5 from Respondents is maintained in Los Angeles County.

6 79. Respondent HPOA's refusal to release records, inadequate search for records, improper
7 redactions of information, and/or allowing another party to control the disclosure of information that is
8 otherwise subject to disclosure violates the CPRA.

9 80. Petitioner requests that, pursuant to Government Code § 6259, this Court issue a writ of mandate
10 compelling Respondent HPOA to release the requested records related to the HPOA document retention
11 policy, as well as the First and Second HPOA Email Request; all requested electronic documents in their
12 native format; all documents responsive to the Contact Information Request, and for Respondents HPOA
13 and A/I to release all documents related to the A/I BID Patrol Request.

14 81. Petitioner also requests that, pursuant to Government Code § 6258, this Court hold and declare
15 that Respondent HPOA violated the CPRA by unlawfully withholding production of the requested
16 records related to the First and Second HPOA Email Request and the A/I BID Patrol Request, and by
17 refusing to produce all requested electronic documents in their native format. Petitioner requests that the
18 Court hold and declare that Respondent HPOA violated the CPRA by unlawfully withholding
19 production of requested emails in its possession when those emails were not marked "Archive for
20 Records." Petitioner requests that the Court hold and declare that Respondent HPOA violated the CPRA
21 by repeatedly refusing to produce electronic documents in their native format. Petitioner further requests
22 that the Court hold and declare that Respondents HPOA and A/I violated the CPRA by entering into a
23 contract whereby a private entity has possession and control of public records that are otherwise subject
24 to disclosure.

25 **Request for Relief**

26 WHEREFORE, Petitioner respectfully requests judgment and/or writ of mandate against Respondent
27 as follows:
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1. This Court issue a peremptory writ of mandate, pursuant to Gov. Code § 6259, directing:
 - a. Respondent HPOA to make all requested documents available for inspection, within 10 days of this Court’s order directing that they do so;
 - b. Nullifying Section 7(b) “Ownership of Work Product” of the Security Service Agreement between Respondents HPOA and A/I;
 - c. Respondent A/I to make available for inspection all documents responsive to the A/I Bid Patrol Request, within 10 days of this Court’s order; and
 - d. Respondent A/I to provide “work product” as defined in Section 7(b) “Ownership of Work Product” of the Security Service Agreement between Respondents HPOA and A/I to Respondent HPOA to, *inter alia*, produce in response to future CPRA requests.
2. This Court enter a declaratory judgment that Respondents have violated the CPRA by unlawfully withholding and/or delaying production of the requested records and by entering into the Security Service Agreement, allowing a private entity to control the disclosure of information that is otherwise subject to disclosure.
3. The Court enter an order awarding Petitioner his costs of suit and reasonable attorneys’ fees and costs incurred in bringing this litigation, pursuant to Government Code § 6259, or, in the alternative, pursuant to Code of Civil Procedure § 1021.5;
4. For such other relief as this Court deems just and proper.

Dated: November __, 2016

By: _____
Matthew Strugar
Attorney for Petitioner

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VERIFICATION

I, Adrian Riskin, have read the foregoing Petition for Declaratory Relief and Writ of Mandate Directed to the Hollywood Property Owners Alliance Ordering Compliance with the California Public Records Act and know the contents thereof. The same is true of my own knowledge, except as to those matters alleged on information and belief, and, as to those matters, I also believe them to be true.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Executed this ___th day of November, 2016, in Los Angeles, California.

By: _____
Adrian Riskin